

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

Donna Dougherty
Plaintiff

CIVIL ACTION

NO. 05-CV-57

vs.

Green Woods Charter School, and
Harold Kurtz, Annette Solarski,
Elizabeth Bailey, Dana Lotkowski,
Emilie Nichols, Carol Spangenberg,
Steve Tilney and Glenn Vickers,
individually and in their official capacities
Defendants

AMENDED COMPLAINT and
JURY DEMAND

COUNT I

INTRODUCTION

1. Pursuant to 42 U.S.C. §1983, Plaintiff, Donna Dougherty, brings this action against Green Woods Charter School and against the individual defendants in their official and individual capacities to redress the deprivation under color of state law of her first amendment right of freedom of expression about issues of public concern and to redress the deprivation of her property and liberty without procedural due process as guaranteed by the fourteenth amendment of the United States. Plaintiff seeks injunctive relief and damages against Green Woods Charter School for breach of her contracts, for violations of Pennsylvania Sunshine Act and Pennsylvania Whistleblower law.

JURISDICTION

2. Pursuant to 28 U.S.C. 1343(a)(3), the District Court has jurisdiction over this civil rights action brought pursuant to 42 U.S.C. §1983 to redress the deprivation under color of state law, custom or usage, of rights secured by the

Constitution of the United States.

3.3. Pursuant to 28 U.S.C. §1331, the United States District Court has jurisdiction over actions arising under the laws of the United States.

4.4. Pursuant to 28 U.S.C. §1367, the United States District Court has supplemental jurisdiction over the state claims.

5.5. Pursuant to 28 U.S.C. §1391(b), venue lies in the District of Pennsylvania where the events giving rise to the claim occurred.

PARTIES

6.6. Plaintiff, Donna Dougherty, is an adult individual residing at 6 Lothian Place, Philadelphia, Pennsylvania 19128.

7.7. Defendant, Green Woods Charter School, is a nonprofit corporation established and operated under a charter from the School District of Philadelphia. The School District of Philadelphia Charter School Law, 24 P.S. §17-1701-A et. seq. Charter School Law, offices and classrooms are located at 8480 Hagys Mill Road, Philadelphia, Pennsylvania 19128.

8.8. Defendant, Harold Kurtz, is the acting Chief Executive Officer of the Green Woods Charter School. His office is located at 8480 Hagys Mill Road, Philadelphia, Pennsylvania 19128.

9.9. Defendant, Annette Solarski, is a secretary of the Green Woods Charter School. She is located at 8480 Hagys Mill Road, Philadelphia, Pennsylvania 19128.

10.10. Defendant, Elizabeth Bailey, is the president of the Board of Trustees of the Green Woods Charter School. She resides at 471 Wigard Avenue, Philadelphia, Pennsylvania 19128.

11.11. Defendant, Emilie Nichol11. Defendant, Emilie Nichols, i11.
TTrusteesTrustees of the Green Woods Charter School. She resides atTrustee
Jannette Street, Philadelphia, Pennsylvania.

12. Defendant, Dana Lotkowski, is a member of the Board of
Trustees of the Green Woods Charter School who voted to terminate
Plaintiff.Plaintiff. She resides atPlaintiff. She resides at 75Plaint
Pennsylvania 19128.

13.13. Defendant, Carol Spangenberg,13. Defendant, Carol Spangenberg,
Trustees of the Green Woods Charter School who voted to terminate
Plaintiff.Plaintiff. She resides at 600 Palariet Road, Philadelphia,
Pennsylvania 19128.

14.14. Defendant, Steve Tilney, is a member of th14. Defendant, S
DirectorsDirectors of the Green Woods Charter School who voted to terminate
Plaintiff.Plaintiff. His office Plaintiff. His office is lPlaintiff.
Services Building, Philadelphia, Pennsylvania 19102.

15.15. Defendant, Glenn Vickers, is15. Defendant, Glenn Vickers, i
DirectorsDirectors of the Green Woods Charter School who voted to terminate
Plaintiff.Plaintiff. He resides at 4Plaintiff. He resides at 469
Pennsylvania 19128.

16. Pursuant to The Charter School Law, 24 P.S. §17-1716-A,
thethe Board of Trustees has authority to decide onthe Board of Trustees has a
the operation of the school, subject to the school's charter.

17.17. Pursua17. Pursuant to the17. Pursuant to the terms of a
OctoberOctober 12, 2003, Green Woods CharterOctober 12, 2003, Green Woods Ch
aa coordinator of instruction for the duration of the 2003-2004
schoolschool year, ending August 31, 2004 at an annual salary of
\$65,000.00. A copy of the written contract is attached hereto as

Exhibit A.

18.18. Defendants, Elizabeth Bailey, Dana Lotkowski, and Annette Solarzski, Solarzski, insisted that the fSolarzski, insisted that the founSolarzski would decide the length of the scSolarzski would decide the length of the school year and the curriculum.

19.19. 19. Plaintiff opposed several founders' wish to close the school year by minutes so that school can be over in early June. Plaintiff Plaintiff raised concerns about compliance with statutory requirements for the length of the school year.

20.20. 20. The Pennsylvania Charter School Law, 24 P.S. §17-171520. A(9) requires charter schools to provide at least 180 days or 900 hours of instruction per year.

21.21. The Charter School Law21. The Charter School Law, 24 P.S. §17-171520. charter schools to comply with 22 Pa. Code, Chapter 12.

22.22. Ch22. Chapter 12 of 22 Pa. Code §12.32, requires schools to have have a policy for maintenance, disclosure and have a policy for maintenance of student records consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g.

23.23. FERPA prohibits, inter alia, the release of educational records23. FERPA prohibits the release of educational records or personally identifiable information contained therein without without the written consent of parents of the student whose records or information is released, unless the release is made to individuals who have a legitimate educational interest as specified in the statute. 20 U.S.C. §1232g(b)(1).

24. FERPA requires each educational institution to maintain a record of individuals other than those specified in 20 U.S.C. §1232g(1)(A) §1232g(1)(A) which have requested or obtained §1232g(1)(A) which have

education records. The access education records. The access record interest of each such person in obtaining interest of each such person the files.

25. In August, 2003, Plaintiff made a presentation about common problems of governance in charter the Charter did not allow founders to govern the school.

26. Beginning in the summer of 2003 through November, 2003, Plaintiff in good faith complaint in good faith complaint unrestricted access to confidential student information in the office area where they are privy to confidential student information and the disclosure of confidential information special education students and about the medical condition of students.

27. Plaintiff reported to the former principal, John DiLello, the secretary's disclosure of private student records.

28. In January, 2004, the Board of Trustees was trained about confidentiality responsibilities. Green Woods Charter School curtailed the access of individual members of the Board of Trustees to student records and to office areas.

29. In February 2004, Plaintiff criticized Defendant because Bailey removed her child from school for a period of approximately 30 days to protest preparation for standardized tests required by The Pennsylvania Charter School Education Act. A(8).

30. On or about April 2, 2004 Plaintiff concerns about Founder concerns about

confidentiality confidentiality and interference with compliance confidentiality

31.31. In retaliation against Plaintiff concerns about school governance, breaches of compliance with the charter school law Lotkowski, Lotkowski, and Solarski, discarded Plaintiff's personal belongings and prevented her from having an office.

32.32. In further retaliation against Plaintiff for violations of the statute of 2004, Defendant, Lotkowski, accused Plaintiff of inappropriate assistance of her son during a test.

33.33. In April, 2004, the Board Charter School directed John DiLello, the former principal of the Green Woods Charter School, to investigate that Ms. Dougherty had assisted them in the process of taking standardized tests which had recently been administered.

34.34. After the conclusion of the investigation, on May 7, 2004, the Board offered Plaintiff a contract as a teacher for the 2004-2005 school year at a salary of \$55,000. The written offer is attached hereto as Exhibit B.

35.35. Plaintiff accepted the offer described memorandum to resolve the controversy.

36.36. Green Woods Charter School, did not implement any other provision of the agreement described on Exhibit B. Defendant Bailey and Lotkowski, objected to Plaintiff to present concerns, comments and questions as provided in the May 7, 2004 memorandum.

37. In July, 2004, Defendant, Nichols, accused Plaintiff of

38.38. Ms. Dougherty did not provide any inappropriate assistance to students who were taking standardized tests.

39. On July 23, 2004, Harold Kurtz, interim chief executive officer of Green Woods Charter School, officer of Green Woods Charter School, informing her that two fifth grade informing her that two fifth grade students were provided inappropriate assistance during the administration of standardized tests in Spring, 2004.

40.40. On August 17, 2004, Harold Kurtz informed Plaintiff that she is suspended without pay, effective immediately, pending action by the Board of Trustees.

41. At meeting of the Board of Trustees on August, 25, 2004, Defendants, Defendants, Lotkowski, SDefendants, Lotkowski, SpDefendants, L dismissdismiss Plaintiff from employment. dismiss Plaintiff from employment from the vote.

42.42. Board members42. Board members who supported the42. Board membe
forfor greater control of operations and access tofor greater control
informationinformation in vinformation in viinformation in violation of s
against Plaintiff and voted to dismiss Plaintiff from employment.

43.43. On September 29, 2004, Kurtz sent Plaintiff a letter confirming that her employment with Plaintiff was terminated effective September 24, 2004.

44. On September 24, 2004, Plaintiff filed a writ of summons in the Court of Common Pleas of Philadelphia County against Green Woods Charter School.

45. On December 8, 2004, Plaintiff filed a complaint in the

Court of Common Pleas of Philadelphia against Green Woods Charter School, School, Kurtz, Solariski, Bailey, Lotkowski, Nichols and Spangenberg.

46.46. On or about December 10, 2004, a complaint was filed with the Pennsylvania Department of Education. The Pennsylvania Department of Education failed to follow professional testing protocols.

47.47. Plaintiff's speech on matters of public concern was a substantial motivating factor for accusations of inappropriate conduct against Plaintiff and the termination of Plaintiff from employment.

WHEREFORE, Plaintiff prays that this Court direct Defendants to reinstate Plaintiff as co-director of the school, award Plaintiff back pay, front pay, compensatory damages, attorney's fees, and punitive damages against Defendants, Kurtz, Solariski, Bailey, Lotkowski, Nichols and Spangenberg, Tilney and Vick Lotkowski, Ni individual capacity.

COUNT II

48.48. Plaintiff incorporates the averments of Count I as if specifically stated herein.

49.49. Defendants terminated Plaintiff from employment. Defendants terminated Plaintiff from employment without a public meeting wherein Defendant, K, public meeting wherein Defendant, terminate Plaintiff. Defendants did not terminate Plaintiff. Defendants failed to provide Plaintiff with facts underlying his allegations of good reason for termination.

50.50. Defendants did not afford Plaintiff a post-termination hearing.

51.51. 51. Defendants deprived Plaintiff of her property51. Defendants herher job and in her liberty interest without affording her due process of law.

WHWHEREFORE,WHEREFORE, Plaintiff prays this Court to enter an orW directingdirecting Defendants to reinstate Plaintiff as coordindirecting instructioninstruction and to award Plaintiff back pay, front pay compensatorycompensatory damages, attorney's fees,compensatory damages, attoc as this Court deems appropriate. Plaintiff prays this Court award her punitive damages against Defendants, Kurtz, Solariski, Bailey, Lotkowski,Lotkowski, Nichols and Spangenberg, Tilney and Vickers, in Lotko individual capacity.

COUNT III

52.52. Plaintiff inco52. Plaintiff incorpor52. Plaintiff incorpo through 51 as if specifically stated herein.

53.53. Green Woods C53. Green Woods Char53. Green Woods Charte contract with Plaintiff for the 2004-2005 school year.

54.54. Defendant, Green Woods Charter School, breached the agreementagreement with Plaintiff to resolve the prior controversy, as outlined in the memorandum of May 7, 2004, attached as Exhibit B.

WHEREFORE,WHEREFORE, Plaintiff prays this Court to order DefeWHEREF GreenGreen Woods Charter School, to reinstate her to her position as coordinatorcoordinator of instruction with back paycoordinator of instructio her compensatory damages.

COUNT IV - Sunshine Act

55.55. Plaintiff incorporat55. Plaintiff incorporates t55. Plai through 54 as if specifically stated herein.

56.56. The Charter School Law, 24 P.S. §17-1716-A, requires the

BoardBoard of TrusteesBoard of Trustees of the Green Woods CharterBoard of T
the Sunshine Act.

57.57. On August 11, 2004, Plaintiff terminated Plaintiff's employment.

58. Defendants did not give public notice of the August 11, 2004 meeting as required by 65 Pa. C.S.A. §709(a).

59.59. The Board held a second meeting on August 25, 2004, to consider Plaintiff's termination.

60.60. Plaintiff submitted written re60. Plaintiff submitted written
Trustees' Trustees' discussions and vote on Trustees' discussions and vote on
in an open meeting.

61.61. In violation of 65 Pa. C.S.A. §708(a)(1), the Board deliberateddeliberated adeliberated abdeliberated about Plaintiff's termination session on August 25, 2004.

62.62. In violation of 65 Pa. C.S.A. §710.1(a), The Board limited comments by the public at the August 25 board meeting. When attendees demanded an explanation of when attendees demanded an explanation of the Board retreated into another closed executive session.

WHEREFORE, WHEREFORE, pursuant to 65 Pa.C.S.A. §713, Plaintiff prays this Court to declare the vote to suspend or Court to declare the vote void, to enjoin the August 11 and at the August 25 board meetings void, to enjoin the Board's decision to suspend Board's decision to suspend Plaintiff's decision to terminate Plaintiff; pursuant to 65 Pa.C.S.A. §714.1, Plaintiff prays this Court to award her attorney's fees and costs of litigation and such other relief as this Court deems appropriate.

COUNT V - Whistleblower Act violations

63.63. Plaintiff i63. Plaintiff inco63. Plaintiff incorporate through 59 by reference as if specifically stated herein.

64.64. In violation of the Pennsylvania 64. In violation of the Per P.S.P.S. §1423, Defendants retaliated against Plaintiff in the coconditionsconditions of employment and discharged her because of her go faithfaith reports to the Principal and Board of violations of law pertainingpertaining to maintenance and disclosure of contents of student recordsrecords and because ofrecords and because of Plaintiff's insistence u provisions of the Charter School Law.

WHEREFORE,WHEREFORE, Plaintiff pWHEREFORE, Plaintiff praysWHEREFORE directingdirecting Green Woodsdirecting Green Woods Charter School to reinst employment as coordinator of instruction; and to award her back pay,pay, front pay and all benepay, front pay and all benefits, pay, fron andand fees incurred for litigation and such other relief as this Court deems appropriate.

Doris J. Dabrowski DJD2187
Attorney for Plaintiff
1500 Walnut St, Suite 900
Philadelphia, Pa. 19102
215-790-1115

JURY DEMAND

Plaintiff demands a trial by jury.

Doris J. Dabrowski

CERTIFICATE OF SERVICE

Doris J. Dabrowski certifies that on February 25, 2005, Doris J. Dabrowski served a copy of the first amended complaint upon counsel for defendants by first class mail, postage prepaid, addressed to:

Vicky P. Deshong
Edward Mintzer, Jr.
Rawle & Henderson
One S. Penn Square
Philadelphia, Pa. 19107

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